IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

**J U D G M E N T**

Nathulal Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.284/2002)

D.B. Criminal Appeal under Section 374 Cr.P.C. against the judgment dated 17.1.2002 passed by the Sessions Judge, Dungarpur in Sessions Case No.77/2000

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Date of Judgment: APRIL 4,2007

**P R E S E N T**

**HON'BLE MR.JUSTICE RAJESH BALIA**
**HON'BLE MR.JUSTICE BHANWAROO KHAN**

Mr.Mahesh Bora, for the appellant
Mr.L.R. Upadhya, Public Prosecutor

**BY THE COURT**: **(PER HON'BLE MR.KHAN J.)**

1. The accused appellant Nathulal has preferred this appeal under Section 374 Cr.P.C. against the judgment dated 17.1.2002 passed by Sessions Judge, Dungarpur whereby convicting the accused appellant under section 302 I.P.C. and sentencing him to undergo imprisonment for life and to pay a fine of Rs.1000/-; in

default of payment to further undergo 3 months simple imprisonment.

2. In succinct the facts are that on 29.4.2000 in Surgical Ward, General Hospital, Dungarpur, statement of Miss Indu Ladha, while having treatment for burn injuries was recorded by the S.D.M., Sagwara, wherein she narrated that she is a student of Third Year Arts in Dungarpur Girls College for the last 3 years and is living in a rented house of some Chaubisa. On the day of incident at about 10:00 A.M. she came to the residence of Nathulal Damore with whom she is having friendship and intimacy. She was in the room of Nathulal cooking food and beside her Nathulal was sitting having a Match Box in his hand. Nathulal asked her whether she can ignite a match from floor to which she denied, in turn Nathulal told her, he can do the same. Two – three days prior to the incident there was a marriage of her brother and from a spark emitted by a cracker, she received burn injury on her stomach, about which also Nathulal inquired and compelled her to reply as to how this burn injury took place. Repeatedly when she was being asked, she told him the same reply and told him why he was asking repeatedly the same

question to this Nathulal took a container which was lying nearby, having a small quantity of Kerosene, and after pouring the Kerosene on her, Nathulal again asked the same question and out of anger he ignited the match and threw it on her maxi. A fire broke out. Nathulal brought a blanket and tried to extinguish the fire, but when he failed he poured water on her body and took her to the hospital. On the evening day before she was also with Nathulal and prepared food for him. Out of fun the fire took place. There was none else in the room. On this statement recorded by the S.D.M. a case under Section 307 I.P.C. was registered against Nathulal.

3. She died in the hospital at Ahmedabad on 5.5.2000. The case was converted from Section 307 I.P.C. to Section 302 I.P.C. The police after investigation submitted a challan against accused Nathulal under Section 302 I.P.C.

4. The accused Nathulal denied the charge levelled against him under Section 302 I.P.C. and pleaded for trial. The prosecution in all produced 13 witnesses. The accused appellant under Section 313

Cr.P.C. denied the correctness of the prosecution evidence and the allegation levelled against him and pleaded that he has been falsely implicated in the case. The trial court after hearing both the parties convicted the accused under Section 302 I.P.C. and sentenced him as stated above.

5. Both the parties were heard. The entire record was gone through.

6. The learned counsel for the appellant argued that there is not an iota of evidence against the accused for sustaining conviction under Section 302 I.P.C. except the dying declaration recorded by the S.D.M. There is no other independent witness who can corroborate the version of the deceased Indra. The dying declaration is to be relied on or rejected in toto and not only a portion of it either can be accepted or rejected. There was no intention of the accused to kill Miss Indra and by mistake or out of fun the incident happened so no case of any murder is made out. The accused and the deceased were having intimacy and the deceased herself had given in her own hand writing, while under treatment at Ahmedabad, that she got the

fire accidentally. Therefore, without supporting or corroborating evidence no case is made out against the accused more so under Section 302 I.P.C.

7. The learned Public Prosecutor opposed the appeal and argued that the dying declaration has been recorded without bias and prejudice so the conviction can be based solely on the basis of dying declaration. The deceased while giving the statement has clearly involved the accused appellant as there was none else except the accused in the room and it was he who after igniting the match stick and pouring kerosene on her set the deceased on fire. The learned trial court after going through the entire evidence has given the conclusion of murder of deceased Indra and no interference is called for.

8. Miss Indra Ladha died of burn injuries is borne out from the statement of P.W.8 Dr.D.P.Jadav, who conducted the post-mortem and prepared the report Ex.P8 and as per his version the deceased got burn injury upto 57% and died due to it. So there was a culpable homicide as Miss Indra died of burn injuries.

9. P.W.1 Harsh Savan Sukha the then S.D.M., Sagwara stated that on the direction of the Collector he recorded the statement of Miss Indra Ladha, who was in the General Hospital, Dungarpur and as per statement given by Indra he recorded the statement Ex.P1 in which Miss Indra has stated that she is a student of Third Year Arts in Dungarpur Girls College. On the day of incident at about 10:00 A.M. she went to the residence of Nathulal with whom she was having friendship. While she was preparing the food in the room Nathulal was sitting beside her having a Match Box in his hand. Nathulal told her that he can ignite the match from floor and asked her whether she can do this or not to which she denied. Nathulal also inquired about a burn mark on her stomach to which she replied that in the marriage of her brother a spark emitted by a cracker hit on her stomach which caused burn mark. But Nathulal repeatedly asked about the same burn mark and when she stated not to ask the same question again and again, Nathulal took a container in which a small quantity of kerosene was there and the same was poured on her and again repeated the question. When she failed to give reply, out of anger he ignited the match and threw on her. A fire broke out. Nathulal tried

to extinguish the same by putting a blanket on her and when failed he poured the water on her. He took her to the hospital. Lastly she said that Nathulal out of fun set her on fire. There was none else in the room except these two.

10. From the evidence as led by the prosecution, it is revealed that immediately after the incident of fire P.W.2 Smt.Premlata who is the owner of the house went in the room of Nathulal and saw Indra burning and Nathulal was trying to extinguish the fire. He poured water on her and took her to the hospital. So the only prosecution evidence available against Nathulal is the dying declaration and the evidence of P.W.2 Smt.Premlata.

11. It is a settled law that dying declaration if truthful, inspire confidence can be relied on and then no other independent corroboration is required for the conviction of the accused and the dying declaration so recorded is to be seen in toto and not in part. It is well proved from the statement of Miss Indra made to the S.D.M. before her death, that she died of burn injuries and the fire was set by the accused Nathulal out of fun.

She was having friendship and intimacy with Nathulal accused.

12. Now, the question is whether the accused wanted to murder Miss Indra or not? The learned counsel for the accused has submitted **A.I.R.1972 SC page 955 (Chand & Ors. Vs. The State of U.P.), A.I.R. 1968 SC page 1390 (Laxman Kalu Nikalje vs. The State of Maharashtra)** and **A.I.R. 1983 SC page 274 (State of Assam vs. Mafizuddin Ahmed)** and pleaded that no case of murder under Section 302 I.P.C. is made out. From the circumstantial evidence it can fall within the purview of Section 304 Part-II I.P.C. as there was no intention to cause death of Miss Indra by the accused. Simply because by accident this fire broke out so at the most the case cannot travel beyond Section 304 Part-II I.P.C.

13. Intention is purposeful doing of a thing to achieve a particular end and it is also the mental attitude of a man, who resolved to bring about a certain result. Intention requires something more than the mere foresight of the consequences and it is done with purpose to achieve a particular end and knowledge

implies awareness wherein certain consequences would or could follow. In intention the knowledge is always there whereas in latter the former i.e. intention is not an essential ingredient.

14. In offence of murder, intention is the root and when one commits the offence, the intention of the accused must be there to kill someone. Culpable homicide is murder when intention of causing such bodily injury as the offender knows it is likely to cause death or with intention of causing bodily injury to any person that is sufficient in the ordinary course of nature to cause death; or, that the person committing the act knows that it is imminently dangerous that it must, in all probability, cause death and such injury is likely to cause death; meaning thereby, intention and knowledge should be such as to cause death or such bodily injury as is likely or, in all probability, to cause death. The dying declaration made by deceased Miss Indra clearly reveals that the fire broke out only out of fun and by the act of the accused. It is admitted that both were having friendship and intimacy and she frequently used to visit the house of Nathulal. At the time of occurrence she was preparing food for Nathulal. So it clearly shows

that there was no enmity between the deceased and the accused.

15. There can be conviction on the sole basis of dying declaration and there need not to have a corroboration provided the dying declaration is truthful, inspire confidence and is made without prejudice or bais. A bare perusal of the dying declaration whichwas made by the deceased reveals that Nathulal set her on fire out of fun, clarify the matter that there was not intention of the accused to kill the deceased Indra. The deceased Indra deposed that when Nathulal failed to get proper reply from her about her burn mark on her stomach he poured kerosene from the container lying nearby which was having a small quantity and ignited a match stick and threw it on her, but later on realising his mistake, he tried to extinguish the fire by putting a blanket on her and when failed he poured water on her and took her to hospital. All later conduct of the accused clearly shows that he was not at all having an intention to kill Miss Indra.

16. There was no intention of the accused to kill Indra, as is revealed by the seizure memo Ex.P3 in

which the container was also having kerosene about 2-2½ Litres of kerosene. Had there been intention to kill, Nathulal would have poured the whole kerosene from container on deceased Indra, but it was not done by him.

17. So there was no intention of the accused to kill deceased Indra, but it can safely be concluded that Nathulal was having knowledge at the time of committing this act that while doing such act he would make all such bodily injuries to Indra as is likely to cause death. When the act of the accused Nathulal was not with intention to kill Indra the culpable homicide cannot come in the periphery of offence of murder but certainly it falls within the third part of Section 299 I.P.C. The act which was done by Nathulal was done with the knowledge that such act was likely to cause death. So it will be within the purview of Section 304 Part-II I.P.C. The judgments cited by the learned counsel for the appellant finds favour in the instant case and on the basis of oral, documentary and circumstantial evidence it can safely be said that the prosecution has established a case against the accused under Section 304 Part-II I.P.C. as there was no

intention of the accused to kill deceased Indra.

18. The dying declaration so made is well proved and can be relied on. From the facts and circumstances it is proved that Nathulal by setting Indra on fire had the knowledge that he was causing such bodily injury to Indra as is likely to cause death and this act was without any intention of murdering Indra. So instead of offence under Section 302 I.P.C. the case falls under Section 304 Part-II I.P.C. and the accused can be convicted for the same.

19. The appeal is accordingly allowed. The conviction against accused Nathulal under Section 302 I.P.C. is altered to one under Section 304 Part-II I.P.C. and the sentence passed under Section 302 I.P.C. is set aside. The accused Nathulal is sentenced under Section 304 Part-II I.P.C. as already gone, which comes out to be 5 years 10 months. Sentence of fine is maintained. He be set at liberty, if not required in any other case.

**(BHANWAROO KHAN) J.** **(RAJESH BALIA) J.**

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